IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

EXXON MOBIL CORPORATION,)
Plaintiff, v.)) 4:10-CV-02386 (LHR
UNITED STATES OF AMERICA,) 4:11-CV-01814 (LHR)
Defendant.)))

DEFENDANT'S SUPPLEMENTAL REFERENCE TO EXISTING AUTHORITY

At oral argument conducted on Friday, July 13, 2018, during a discussion about whether there can be more than one removal or remedial action at a site under the Comprehensive Response Compensation and Liability Act of 1980, the Court inquired of counsel whether any other court had been "brave," – in context, a question about whether there were opinions that disagreed with those set forth, primarily, in *Colorado v. Sunoco*, 337 F.3d 1233, 1241 (10th Cir.2003); and *Kelley v. E.I. DuPont de Nemours and Co.*, 17 F.3d 836, 841–44 (6th Cir.1994).

The answer to that question is in the affirmative, and the United States therefore calls the Court's attention to *Valbruna Slater Steel Corp. v. Joslyn Manufacturing Co.*, 2013 WL 1182985 * 10-12 (N.D. Ind. 2013) (addressing the statutory language at issue). *See also Bernstein v. Bankert*, 733 F. 3d 190, 215 (7th Cir. 2013) (*sua sponte* treatment of work undertaken under separate Administrative Orders on Consent as distinct removal actions); *United States v. Manzo*, 182 F. Supp. 2d 385, 399-403 (D.N.J. 2001); *Raytheon Constructors, Inc. v. ASARCO, Inc.*, 2000 WL 1635482 *13-21 (D. Co. 2000) (parsing lengthy cleanup into multiple removal actions and remedial work based on facts found); United *States v. Ambroid Co.*, 34 F. Supp. 2d 86 (D. Mass.

1999) (multiple removal actions); *United States v. Akzo Nobel Coatings, Inc.*, 990 F. Supp. 897, 904-07 (E.D. Mich. 1998) (Remedial action followed by subsequent removal action).

With the exception of the *Raytheon Constructors* precedent, each of these cases is cited in the United States' Memorandum in Support of its pending motion for partial summary judgment (No. 223-1). Accordingly, these citations are offered merely to provide a more complete answer to the Court's question.

Respectfully submitted,

Dated: July 24, 2018 JEFFREY H. WOOD

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CERTIFICATE OF SERVICE

I hereby certify that on July 24, 2018, I filed the foregoing Supplemental Reference to Existing Authority using the Court's CM/ECF system, which will electronically serve all counsel of record registered to use the CM/ECF system.

/s/ Michael D. Rowe	
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